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No. [redacted] O. T. 1905

Supreme Court of the United States

OCTOBER TERM, 1905.

Office Supreme Court U. S.
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JAMES H. McKENNEY,
Clerk

129

THE COUNTY COMMISSIONERS OF WICOMICO COUNTY,
Petitioners,

vs.

SAMUEL BANCROFT, JR.

PETITION FOR WRIT OF CERTIORARI.

JAMES E. ELLEGOOD,
Attorney for Petitioners.

Brewington Brothers Co., 103 Main St., Salisbury, Md.

Supreme Court of the United States.

OCTOBER TERM, 1905.

The County Commissioners of Wicomico County

vs.

Samuel Bancroft, Jr.

NOTICE OF PETITION.

To SAMUEL BANCROFT, JR.,

Please take notice that on the day of 1905, at the opening of the Court on that day, or as soon after as counsel can be heard, a petition of Certiorari will be submitted to the Supreme Court of the United States at the City of Washington, D. C., for the decision of the Court thereon.

In support of said petition a brief will also be presented to the Court.

A copy of the petition and the brief are herewith served upon you.

Respectfully,

.....

Atty. and Counsel for Petitioner.

.....1905.

Due service of the aforegoing notice of motion in the above cause is hereby admitted this day of 1905, as sufficient.

.....

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

To the Honorable, the Supreme Court of the United States:

The Petitioner, the County Commissioners of Wicomico County, respectfully petitions this Honorable Court to issue a writ of Certiorari, directed to the United States Circuit Court of Appeals for the Fourth Judicial Circuit, requiring that Court to certify to this Honorable Supreme Court the case of Samuel Bancroft, Jr., Complainant, vs. The County Commissioners of Wicomico County; and in support of said petition, the respondent therein, the petitioner herein, respectfully presents the following as grounds in support thereof:

First. That Wicomico County is one of the Organic Political Divisions of the State of Maryland as provided by the Constitution of the said State, and by Sec. 1, Art. 7 of the said Constitution, they are required to be elected on the general ticket of each County by the qualified voters thereof, "and their powers and duties shall be such as are now, or may hereafter be, prescribed by law."

Second. That by Art. 25 of the Code of Public General Laws of the State of Maryland, they are invested with large and responsible public powers and duties relating to the general welfare of the County and the State at large.

Third. That among the powers conferred by the said Articles of the said Code is the duty to levy all needful taxes on the assessable property within the County, liable to taxation and provide for collecting the same, and to pay and discharge all claims on or against the County which have been expressly or impliedly authorized by law. (See Sec. 7, Art. 25 of Code.)

Fourth. That under and by virtue of Art 81, Sec. 10, of said Code of Public General Laws it is made the duty of the said County Commissioners "to assess all assessable property and add the same to the amount on which taxes are to be levied;" and by Sec. 13 of Art. 81 aforesaid, the said Commissioners "are directed to alter and correct the account of any person who may have disposed of their property or acquired any property since the last assessment, or whose property, or any part thereof, may have been omitted, upon satisfactory evidence, and may correct and alter the assessment so as to conform to its true value."

Fifth. By an act of the General Assembly of Maryland passed at the Session of 1896, Chap. 120, of the Laws of Maryland, provision was made for a General Assessment of the property in the said State of Maryland, liable to assessment, and the County Commissioners were constituted a Board of Control and Review for all property assessed in the said County, with power to hear appeals relating to the valuation for assessments, and to correct the same and assess property which had been omitted to be valued by the assessors of the said County, and to examine carefully the reports of valuation of property made by the said assessors and claimed by the owners thereof to be exempt from valuation and assessment, and to correct the same, and "to value any property which had been omitted to be valued by the assessors;" all of which will more fully appear by Sec. 182 of the said Act of 1896, Chapter 120.

Sixth. In Sec. 184 of the said Act of 1896, it is provided that the *owner of property claiming the same to be exempt from valuation and assessment may file a petition in the Circuit Court* for that County in which the said property has been so valued, setting forth the facts of the said case and the ground upon which said exemption is claimed. To which petition the County Commissioners of the County in which the said valuation was made shall be made defendants and are required to answer the said petition. It is also made the duty of the said Circuit Court to hear the case upon petition and answer, affidavit and another satisfactory proof. And the *said Court shall determine whether the said property is or is not subject to such valuation and assessment*, and if the Court shall determine that the said property is subject to such valuation and assessment, it shall so determine by its order.

Seventh. By Sec. 186 of said Act of 1896 it is provided that *any one of the parties* to the proceedings mentioned aforesaid *may appeal from the order of the Court to the Court of Appeals of Maryland.* Said Court shall, if then in session, immediately hear and determine the said case, or shall hear and determine the same upon its re-assembling.

Eighth. That on or about the 27th day of February, 1886, the Baltimore and Eastern Shore Railroad Co. was duly incorporated under provision of the Act of the General Assembly of Maryland, passed in 1876 entitled "an Act to Provide for the Creation and Regulation of Incor-

porated Companies in the State of Maryland," for the purpose of building a Railroad between Claiborne on the Eastern Bay in Talbot County, running through the counties of Talbot, Caroline and Dorchester, with its eastern terminus at Salisbury, Wicomico County, all in the State of Maryland. That afterwards the General Assembly of Maryland, at the session of 1886, being Chap. 133 of the Laws of Maryland greatly enlarged the powers and privileges of the said Baltimore and Eastern Shore Railroad; a summary of which is: to construct and operate branch roads, establish pleasure resorts along the line of the road, to purchase and charter and hold steamboats and barges to ply in connection with their roads, and to unite, connect with and consolidate with any Railroad Company or Companies either in or out of the State, with all property, franchises, rights, privileges and immunities which each of them possess, have and enjoy under and by virtue of their respective charters. Also with power to lease, purchase or operate any Railroad or Railroads either in or out of this State and conferring upon other Railroads in the State the right to lease or sell its property to the said Baltimore and Eastern Shore Railroad Company, and by Sec. 2 of Chap. 133 of the said Act of 1886, it was provided as follows: "that the said Corporation shall have perpetual existance, and its franchises, property, shares of capital stock and bonds shall be exempt from all State, County or Municipal taxation for the term of 30 years, computing from the date of the completion of the said road between the terminii mentioned in its charter." (See Agreed Statement of Facts, 1st Paragraph, page 27 of Record.

Ninth. That in pursuance of the powers granted the said Railroad Co., it proceeded to construct its road from Claiborne to Salisbury and completed the same about August 1891; and in further pursuance of its powers, it bought the property, assets, rights and franchises of the *Wicomico and Pocomoke Railroad Company*, a corporation of the State of Maryland, which was then, and had been for quite a number of years, operating a railroad between the town of Salisbury, Wicomico County, and Ocean City, Worcester County, Maryland on the Atlantic Coast, thereby completing a continuous line from Claiborne on the Chesapeake Bay, across the Maryland peninsula with its eastern terminus at Ocean City on the Atlantic Coast. (The Wicomico and Pocomoke Railroad Co. had no exemption from taxation for its property and franchises.)

Tenth. That after its incorporation as aforesaid and purchase of the said Wicomico and Pocomoke Railroad Co., the said Baltimore and

Eastern Shore Railroad Co. executed and delivered to the Atlantic Trust Co. a mortgage deed of trust in 1890, and another in 1892 to secure the payment of bonds amounting to $1,600,000. (See Paragraphs 3 and 4 of the Agreed Statement of Facts, p. 28-29 of record.)

Eleventh. That in August 1894 the said mortgage was foreclosed by a decree of the Circuit Court of the United States for the District of Maryland, at the suit of the Scranton Steel Co. and Atlantic Trust Co., against the said Railroad Company; and Nicholas P. Bond became the purchaser thereof. (5th Paragraph, p. 29 of record.)

Twelfth. That the said Bond, together with certain associates, formed a Corporation known as the Baltimore, Chesapeake and Atlantic Railway Company for the purpose of operating, possessing and maintaining the property so acquired. That the said Corporation was organized by virtue of Sections 187-188, et seq., Art. 23 of the Code of Public Gen. Laws, (Par. 6, p. 29 of Record.)

Thirteenth. That afterwards in the month of September, 1894, the said Baltimore, Chesapeake and Atlantic Railway Co. executed a mortgage to the Atlantic Trust Co. to secure 1250 bonds of $1,000 each, and that Samuel Bancroft, Jr., the respondent, (Complainant below) became the owner of certain of the bonds. (See 8th and 9th Paragraphs, p. 30 of Record.

Fourteenth. That after the acquisition of the property and franchises of the Baltimore and Eastern Shore Railroad Company and the Wicomico and Pocomoke Railroad Company by the Baltimore, Chesapeake and Atlantic Railway Company, it purchased large and valuable properties of other Corporations within the State of Maryland, that is to say: The Maryland Steamboat Company, The Eastern Shore Steamboat Company and others, and among them a large number of steamboats plying upon the Chesapeake Bay, making three classes of property owned by the Baltimore, Chesapeake and Atlantic Railway Company, to wit: (1) That originally owned by the Baltimore and Eastern Shore Railroad from Clairne to Salisbury, (2) That owned by the Wicomico and Pocomoke Railroad Company from Salisbury to Ocean City, and (3) that acquired by the Baltimore, Chesapeake and Atlantic Railway Co., after its incorporation. (See p. 32, 33 and 34 of Record.)

Fifteenth. That an assessment was made under the provision of the Act of 1896, Chap. 120 aforesaid, whereby a general assessment of the

property was required to be made, and by which the property "real a personal of each and every Railroad Company in this State, working road by steam power, shall be valued and assessed for County and Mu cipal purposes in the same manner as the property of individuals may valued and assessed under this Act." (See Sec. 2, Chap. 120 of the A of 1896). Section 1 of the said Act requires "all State and County taxes all municipal taxes shall be levid upon the assessments made in confo ity with the provisions of this Article and in conformity with all l relating to revenues and taxes not embraced in this article." But so i that the said Baltimore, Chesapeake and Atlantic Railway Compa claimed that by virtue of the purchase by N. P. Bond of the property franchises formerly belonging to the said Baltimore and Eastern Sh Railway Co., and by virtue of the organization of the said Baltim Chesapeake and Atlantic Railway Company by the said N. P. Bond his associates, under Sec. 187, 188, 189 et sec. Art. 23, of the Code of Public General Laws of the State of Maryland, and because of the exe tions granted to the said Baltimore and Eastern Shore Railroad by Acts of 1886 Chap. 133 as aforsaid, it became entitled to exemption f taxation upon all of its property hereinbefore classified and fully set on pages 32, 33, and 34 of the Record, except wharf property situat Wicomico County, on page 34 of the Record; and all of the said prop (except the said wharf property) was omitted from the assessment bo of the said county, and no levy was made upon the same until 1899.

Sixteenth. That in 1899 the Board of County Commissioners of said County give notice to the said Railroad Company, according to statute in such case made and provided, of the intention of the said C missioners to value and assess the said property in accordance with provisions of the Act of 1896. That the said Company appeared by duly authorized agent and attorney before the said Commissioners claimed exemption from taxation; but the said Commissioners asse the said property at the valuation agreed upon and placed the same u the list of taxable property of the said County and levied taxes ther but the said Railroad Company still refused to pay the said taxes or part thereof; whereupon the said Commissioners brought suit in Circuit Court for Wicomico County and recovered judgment for the 1899 upon the 25th day of September, 1900, upon *all property of the Company*, from which judgment the said Company took an appeal to Court of Appeals of Maryland, which was tried at January Term,

thereof, and the said judgment was affirmed by the said Court of Appeals and is found reported in 93. Md. pg. 113, et seq., of the Reports of the said Court of Appeals.

Seventeenth. That at a prior session of the Court of Appeals, upon the appeal of the said Baltimore, Chesapeake and Atlantic Railway Co. against Ocean City, the said Court had decided that all the said property was liable to taxation, as will be found by reference to page 89, Vol. 89, Md. Reports.

Eighteenth. That the said County Commissioners had, in pursuance of the said decision and in discharge of the duties required of them, levied in June for the year 1900 and 1901 the taxes upon the property of the Baltimore, Chesapeake and Atlantic Railway Co., and placed them in the hands of their duly appointed Collector of Taxes for the said County, whose duty it was to collect the same if necessary by the summary proceedings of distress. (See Code, Art.49-50, Sec. 81). That the only remaining power or duty of the said petitioners was to bring suit for the collection of the taxes, and could only enforce their payment by an execution issued to the Sheriff of said county by the Circuit Court of the said county.

Nineteenth. But notwithstanding the said taxes had been assessed and levied as stated and were in the hands of the said Collector, the respondent herein, (Complainant below) filed the bill of complaint on the second day of August, 1901, in the Circuit Court of the United States in and for the District of Maryland, wherein he alleges "this complainant is informed and believes, and therefore avers, that the said defendants claiming to act as the County Commissioners of Wicomico County, have levied and assessed, and are about to attempt to collect taxes against the said property for the year 1900 and also for the year 1901, and that other counties or towns in which the line of Railway and property of the said Baltimore, Chesapeake and Atlantic Railway passes, or in which it is situated, are about to assess, levy and to attempt to collect taxes not only from the said line of Railway and property purchased from said Wicomico and Pocomoke Railroad, but also against the Railroad and property originally owned by the said Baltimore and Eastern Shore Railroad Co., on the ground that under the said decision of the Court of Appeals of Maryland, the said exemption from taxation did not pass to the said Baltimore, Chesapeake and Atlantic Railway Co., by virtue of the said sale under the decree and order of this Honorable Court in the proceedings of the Atlantic Trust Co. against the Baltimore and Eastern Shore Railroad, and the

said proceedings for the re-organization and formation of the said Railway Co., under Sections 187-88-89-90 of Art. 23 aforesaid". (See XVI, pgh. pg. 1 of Record.) That the said Complainant, (respondent herein) claimed and averred that the Chap. 133 of the Acts of 1896 and the construction o its roads as aforesaid, became by virtue of the said Act aforesaid, a con tract between the State of Maryland and the said Baltimore and Easter Shore Railroad Co., *and its successors, and that any law or ordinance passe by the State of Maryland, or by any municipal corporation or any Count of the said State, impaired the obligation of the said contract and is unlawfu and void* because in violation of the 10th Sec. of Art. 1 of the Constitu tion of the United States forbidding the passage of any law impairing th obligation of contracts and that the said proposed assessment, levy and collection of the said taxes by the defendant against the said Baltimore Chesapeake and Atlantic Railway Co., and the ordinance and resolution passed by the said defendant in which the said taxes are attempted to b enforced, is null and void, because the same impairs the obligation of th contract in Chap. 133 of the Acts of 1886. (See Paragraph XVII, Record p. 10.)

Twentieth. The said Complainant (Respondent herein) prayed fo an injunction from the said Court to restrain the said County Commis sioners forever from assessing, levying, or collecting taxes in any manne against the property of the said Railroad Company, (See prayers for relie p.12 of Record); basing his claim to interfere and ask for this summary relie *upon the meagre and insufficient allegations of paragraphs XVIII and XIX 11 of the Bill of Complaint*, which is, in substance, that he apprehends "a lessening of the ability of the said Railroad Company to pay the interes upon the said bonds"; and because "the amount of taxes will greatly in crease the charges to be paid by the said Railway Company"; and the fur ther allegation that the Atlantic Trust Company refuses to sue, "unles requested by a majority of the said bondholders", and because neither h or any of the bondholders, or the Atlantic Trust Company, were partie to the suit of the Mayor, &c. Ocean City vs. Baltimore, Chesapeake and Atlantic Railway Co., and is not bound by the said decision; paragraph XX, p. 12 of Record. (No reference is made to the decision in the cas between these defendants, petitioners herein, and the B., C. & A. Ry. Co. reported in *93. Md., 113, in which the Act of Assembly referred to, had bee construed by the Court of Appeals of Maryland in favor of the respondent be low, before this injunction suit, and the liability of the said Railway Company*

for taxation had been fixed, and the duty of the said County Commissioners had been settled by the highest Court of Maryland.

Twenty-first. To this Bill of Complaint, this petitioner filed its demurrer, assigning as cause for demurrer:

1. That the plaintiff has not in his bill of complaint, stated any cause entitling him to the relief prayed.

2. Because he has no legal standing in Court upon the allegations of his bill, and for want of jurisdiction in the Court.

And for other good causes appearing on the face of the said bill.

Twenty-second. This demurrer His Honor, Judge Morris, of the District Court of Maryland, "overruled without passing on the merits of the bill", (Record p. 17-18) whereupon the defendant answered the bill of complaint, (see Record p. 19 to 25) which was submitted to the court upon "Agreed Statement of Facts", (Record p. 26 to 34) many of which have been herein set out.

Twenty-third. After the hearing, the learned Judge gave judgment, filed April 6th, 1903, (Record p. 123) wherein it was "adjudged, ordered, and decreed that the said defendant (petitioner herein) be and they are enjoined and prohibited from levying, assessing or collecting taxes upon so much of the property of the Baltimore, Chesapeake & Atlantic Railway Company situate and being in Wicomico county, State of Maryland, as was formerly the property of the Baltimore & Eastern Shore Railroad Company constructed and built by the said Baltimore & Eastern Shore Railroad Co. under its charter", etc., (See p. 124 Record) which decree is founded upon the opinion of the Court, that "under Sec. 188, Art. 23 of the Maryland Code the Baltimore, Chesapeake & Atlantic Railway Company in respect to the property purchased under the foreclosure sale, and which was exempt while in the possession of the Baltimore & Eastern Shore Railroad Company did have granted to it the exemption possessed by the original company, and that *the exercising of the taxing power delegated by the State Legislature to the Board of County Commissioners by imposing a tax on this property is a legislative act impairing the obligation of the contract of exemption and within the inhibition of the Federal Constitution*". (Record p. 122.

Twenty-fourth. From this decree, cross appeals were taken to the United States Circuit Court of Appeals for the Fourth Circuit, which "affirmed" the judgment of the District Court, holding that the "*demand*

on the part of the County Commissioners *is a legislative act* and in viol tion of Art. 1, Sec. 1, of the Constitution of the United States".

We respectfully request the attention of the Court to the opinion the learned Circuit Court of Appeals (Record, page), wherein th Court apparently falls into important errors of fact, when it says "t charter granted by the State of Maryland, and amendments thereto, a Sec. 188 of the Code of that State, constitute a contract between the Sta and the railroad company by which among other things immunity fro taxation is offered as a *consideration* or inducement to secure the construc ion of the railroad between the points mentioned in the char'er, and such, becomes a part of the contract between the State and the railro company; and the bondholders by virtue of their interest in the origi corporation are entitled to this exemption".

The errors, we submit, are (1) that there is no condition or "consi eration" set out in the statute as an inducement to secure the constructio of the railroad; (2) the Baltimore & Eastern Shore Railroad had be constructed before Mr. Bond became purchaser, and therefore before t organization of the Baltimore, Chesapeake & Atlantic Railway Company (3) that the bondholders in the original corporation (B. & E. S. R. R. C can have no possible interest in result of this suit. Again on p. of R the Court of Appeals says: "the Court in dealing with this question w not bound to follow the rule of construction adopted by the State Cou inasmuch as the organization of the Baltimore, Chesapeake & Atlan Railway Company had been consummated and *its bondholders had ente into a contract with the State of Maryland by which it had agreed in the co sideration of the construction of said road, the said company was to be exem from taxation for a period of thirty years from the date of the completion the same.*"

Apparently the Circuit Court of Appeals falls into the error that t Baltimore, Chesapeake & Atlantic Railway Company built the said ro and that the exemption was a "consideration" from the State to that co poration, as an inducement for its construction of the said road. At mo it could have been only a minor inducement, among *the munificent pow gratuitously granted the* Baltimore & Eastern Shore Railroad Company, f purchase thereof, by Mr. Bond.

Twenty-fifth. Your petitioner represents that the *decision of United States Circuit Court* for the District of Maryland *is in direct conf*

with the "*construction*" of the aforesaid statutes, established by the two aforesaid *decisions of the Court of Appeals of Maryland*, the Court of last resort, except to this Honorable Supreme Court where a federal question is at issue.

And your petitioner further shows that the said Baltimore, Chesapeake & Atlantic Railway Company sued out a writ of error to this Honorable Court in the case of Mayor & Council of Ocean City, which upon motion was dismissed by this Court "on the authority of Lehigh Water Co. Vs. Easton, 121 U. S. 388; Central Land Co. vs. Laidly, 159 U. S. 103; Oxly Stave Co., vs. Butler Co. 166 U. S. 648; L. & N. R. R. Co. vs. Louisville, 166 U. S. 709; Ambro vs. United States, 159 U. S. 695; Powell vs. Supervisors, 150 U. S. 433," some of which cases we humbly submit settled that no federal question was involved. Lehigh Valley Water Co. vs. Easton, 121 U. S.

Twenty-sixth. Your petitioner respectfully shows that the decision and decree of the District Court of Maryland affirmed by the United States Circuit Court requires the consideration of this Honorable Court and should be reviewed:

1. Because of the *unusual importance and gravity* of the questions involved, that is to say, *the interference by the United States Courts with the State of Maryland in the discharge of its sovereign power of assessing and levying taxes for the support of the government through one of its political divisions.*

2. Because it is an ettempt to *prevent the performance of a legislative function*, delegated to the County Commissioners by the Legislature as provided for in the Constitution of the State.

3. Because of the *conflict between the Court of Appeals of Maryland and the Federal Court*, Which is correct should be decided and settled by this Court of Last Resort, so the petitioner, and the Commissioners of the other Counties of the State, through which the railroad of the Baltimore, Chesapeake & Atlantic Railway Company runs, may know what their powers and duties are.

Twenty-seventh. Your petitioner further submits that the said degree granting an injunction is erroneous.

1. Because the Baltimore, Chesapeake & Atlantic Railway Company were necessary parties to the bill of complaint, but are omitted.

2. Because the allegations of the bill are not such as required the exercise of the extraordinary power of injunction.

A. There is no direct averment of damages to the complainant.

B. Or failure or inability of the Railway Company to pay his interest.

C. Or of any effort to have the Railway Company Directors defend the said Corporation from the imposition of the alleged illegal taxation.

D. Or of any refusal or failure of the said Directors to defend the Corporation from the imposition of illegal taxes.

On the contrary the Record shows they have defended the said Corporation, and twice contested against the payment of the said taxes (Record, page 31, 10th., par., Agreed Statement, and page 89 to 96, Mayor & Council Ocean City vs. Baltimore, Chesapeake & Atlantic Railway Company, and page 97 to 112 of Record, Baltimore, Chesapeake & Atlantic Railway Company vs. County Commissioners of Wicomico County).

3. Because it should be distinctly shown or averred by the Complainant that this is not a collussive suit to confer jurisdiction upon the United States Courts, and to evade and override the decisions of the State Court.

4. Because the issue involved only a "rule of construction" of the statute in question, already settled by the Court of Appeals of Maryland, and the Bill could not justly raise the issue of the impairment of the obligation of a contract by the State, in view of Art. 3, Sec. 48 of the Constitution of Maryland, which declares "all Charters granted or adopted may be altered from time to time, or repealed."

Wherefore, your petitioner prays, That this Honorable Court will be pleased to grant a writ of certiorari requiring the appeal case of the County Commissioners of Wicomico County vs. Samuel Bancroft, Jr., to be certified from the United States Circuit Court of Appeals for the 4th. Circuit for review and determination by this Honorable Court.

Jas. O. Allen
Solicitor for Petitioner.

State of Maryland, County, to wit:

being duly sworn, deposes and says, I am the President of the Board of County Commissioners of Wicomico County, petitioner in this cause, and I have read the foregoing petition; that the same is true of my own knowledge, except those matters which are stated

upon information and belief, and of which I am credibly informed, and as to those matters I believe them to be true.

President Board of County Commissioners
of Wicomico County.

Subscribed and sworn to before me this day of October, in the year nineteen hundred and five.

In testimony whereof, I have hereunto affixed my name and set my notarial seal.

Notary Public of the State of Maryland,
in and for Wicomico County.

I hereby certify that I have examined the foregoing petition, and that in my opinion, the petition is well founded, and that the case is one in which the prayer of the petitioner should be granted by this Court.

of Counsel for Petitioner.